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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,598	11/12/2005	Moti Harel	E1975-00020	6923

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DUANE MORRIS, LLP
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

EXAMINER

HUANG, GIGI GEORGIANA

ART UNIT	PAPER NUMBER
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1609

MAIL DATE	DELIVERY-MODE
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05/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,598

Applicant(s)

HAREL ET AL.

Examiner

GiGi Huang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 35-64 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 35-56, drawn to a composition comprising a carotenoid and a phospholipid.

Group II, claims 57-59 are drawn to a method of feeding an animal a composition comprising a carotenoid and a phospholipid.

Group III, claims 60-64, drawn to a method of preparing an animal feed composition comprising a carotenoid and a phospholipid.

2. The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking Groups I – III is a composition comprising a carotenoid and a phospholipid.

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Bombardelli et al. (U.S. Pat. # 5,897,866) et al. teaches the process of extraction of lycopene and other lipophilic extracts in fruits with phospholipids and several compositions containing lycopene (a carotenoid) and lecithin (a phospholipid).

Therefore, the technical feature linking the inventions of Groups I – III does not constitute a special technical feature as defined by PCT Rule 13.2 lacks novelty as it does not define a contribution over the prior art.

Accordingly, Groups I – III are not so linked by the same or a corresponding special technical feature as to form a single general inventive concept.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

a. Carotenoids: astaxanthin, zeaxanthin, canthaxanthin, lutein, beta-carotene, and lycopene.

Applicant is to elect a species and indicate the source of the elected carotenoid as they represent an improper Markush group.

The compounds should have a common core and a common utility. The species disclosed in the Markush group contains many species of carotenoids several of which have multiple uses and with very different functions and effects. As a result, the Markush group fails to show common utility.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply

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must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: Claim 1.

b. Phospholipids: at least 20% of the fatty acid residues are polyunsaturated, at least 10% of the fatty acid residues have 3 or more double bonds, at least 10% of the fatty acid residues have 4 or more double bonds, at least 20% of the fatty acid residues have 4 or more double bonds.

1) The source of the phospholipids: from a microbial source, egg lecithin, fish, crustaceans, shellfish, mammals, or mammalian brain.

Applicant is to elect a species and indicate the source of the elected phospholipid as they represent an improper Markush group.

The compounds should have a common core and a common utility. The species disclosed in the Markush group contains many species of phospholipids several of which have multiple uses on commercial and cellular levels; very different functions and effects based on the number of double bonds are present. As a result, the Markush group fails to show common utility.

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Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: Claim 1.

4. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

a. The animals to be fed the composition: a fish, a crustacean, a terrestrial animal, or a bird.

Applicant is to elect a species and indicate the source of the elected animal as they the nutritional needs for each species is entirely different for growth, maintenance, and function. A fish cannot consume grass as a cow can in feed. A goose requires different nitrates than a crustacean. Thereby the feeds are distinctly different and do not have a common inventive step.

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Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: Claim 1.

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species and invention to be examined even though the requirement can be traversed (37 CFR 10143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should the applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on

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the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Please note that an election of a group and the species for examination may still be subject to an additional restriction in the future.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

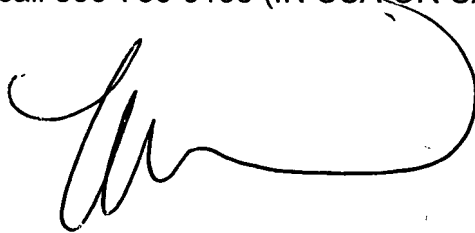
Any inquiry concerning this communication or earlier communications from the examiner should be directed to GiGi Huang whose telephone number is (571) 272-9073. The examiner can normally be reached on Monday-Friday 7:30AM-5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecelia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GH

A handwritten signature in black ink, appearing to be 'Vickie Kim', with a large, sweeping loop at the end.

**VICKIE KIM
PRIMARY EXAMINER**